IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
Criminal Appeal No.334 of 2003

Shivaji Bhaguji Bhoi — Appellant
Vs.
State of Maharashtra — Respondent

Mr.M.K.Kocharekar with Mr.P.S.Dani for appellant.
Mr.K.V.Saste, APP for State.

CORAM: B.H.MARLAPALLE & R.S. MOHITE, JJ.

March 13, 2007.

ORAL JUDGMENT (PER B.H.MARLAPALLE,J.)

1. This appeal filed under Section 374 of Cr.P.C. arises from the order of conviction and sentence passed by the learned Addl. Sessions Judge at Niphad on 27th January 2003 in Sessions Case No.19 of 2002, for the offence punishable under Section 302 of IPC. The appellant-accused has been sentenced to suffer life imprisonment and to pay a fine of Rs.1000/- in default further RI for six months and set off under Section 428 of Cr.P.C. has also been granted.

2. As per the prosecution PW 6 Bhanudas Kacharu Salve working as labourer and resident of Dindori in Niphad taluka was smoking chilim (tobacco pipe) between 6.00 to 6.30 p.m. on 8/6/2002 in his house in the company of Shivaji Gangadhar Lahange (PW 5)

and at that time Rohidas Pawar, resident of the same village and a friend also joined them. The accused reached the spot i.e. the rear side room of the house of PW 6 Bhanudas where all the three friends were smoking chilim and he stated that Rohidas Pawar had raped his wife and at that juncture he took out a knife from his pocket and gave one blow by the said knife to Rohidas on his upper part of the abdomen. Before the accused could give a second blow, Bhanudas - PW 6 tried to snatch the knife and in the process there was some scuffle between the two and both of them, accused as well as PW 6 Bhanudas, sustained injuries on their fingers. Rohidas was profusely bleeding and he was lifted by Shivaji (PW 5), Bhanudas (PW 6) and two others and taken to his house where his brother's wife PW 2 - Mira and her daughter Ujwala, aged about 16 years, were present. The njured Rohidas was placed on the ota (platform) outside his house and his wife Manda on that day was with her parents at Pimpalgaon. PW 2 Mirabai came to know that it was the accused who had caused stab injury to Rohidas and, therefore, she ran to the house of the accused and questioned him as to why he assaulted Rohidas, her brother-in-law. The accused stated that what he did was right and she would not

understand. PW 1 Ankush Pawar, the brother of Rohidas returned at about 8.30 p.m. to his house and when he came to know about the incident, he started looking for a jeep for shifting Rohidas to the nearest hospital. Similar efforts were made by PW 2 Mirabai as well in the absence of her husband but it appears that the jeep was available after some time and Rohidas was taken to the Rural Hospital at Niphad in the jeep of PW 4 Vitthal Gangurde. On examination of Rohidas, the Medical Officer declared him dead. PW 1 Ankush filed a complaint which came to be registered as an FIR (Exhibit 14) at about 10.30 p.m. with Niphad police station on the same day i.e. on 8/6/2002. The accused had disappeared from the village and on the next day he visited the house of Eknath Pagare (PW 11) who in turn contacted PW 3 Laxman Mali, Police Patil. Intimation on phone was given to the police by the police patil and that is how the accused was taken in custody on 9/6/2002 by drawing the arrest panchanama (Exh.25) for which PW 8 Walmik Shinde was one of the witnesses. At that time he was wearing only underpant and banyan and, therefore, PW 11 was sent to bring his clothes from his house and they were made available to him by the said witness in the police station. PW 12 Shantaram

Mahajan, the Police Inspector from Niphad Police Station undertook further investigation. The weapon i.e. the knife which was used in assaulting the deceased Rohidas was confiscated by PW 6 Bhanudas and kept in his dung pit and was made over to the I.O. during the course of investigation. The clothes of the deceased, knife and the clothes of the accused were sent for chemical analysis and the CA reports at Exhibits 10, 11 and 12 were received by the I.O. The dead body was sent for post-mortem and PW 10 Dr.Ramesh Walunj, the Medical Officer at the Rural Hospital, Niphad conducted the post-mortem which commenced at about 11.30 a.m. and was completed at 1 p.m. on 9/6/2002. The P.M. report at Exhibit 33 was filled in and signed by PW 10. The probable cause of death in the said report was "cardio respiratory failure due to haemorrhagic shock due to poly trauma to lung, liver and spleen due to stab injury". On completion of investigation the charge-sheet was filed and the case being triable by the Sessions Court, it was committed.

3. The prosecution examined in all 12 witnesses in support of its case and PW 5 Shivaji and PW 6 Bhanudas were claimed to be the eye witnesses to the

incident. The defence claimed that the accused was innocent and was falsely implicated. The defence alleged that actually the deceased was assaulted by PW 5 and PW 6 and after causing him serious injuries they noticed that he was dead and in that condition only they shifted the dead body to the house of PW 1, the complainant at about 7 to 7.30 p.m. on 8/6/2002. When Ankush PW 1 returned to his house, he was aware that his brother Rohidas was already and, therefore, he did not take immediate steps to hire a jeep and shift him to the hospital. The defence further alleged that the complainant in connivance with PW 5 and PW 6 falsely implicated the accused.

4. PW 10 Dr.Ramesh Walunj stated before the trial Court that Police Constable S.B. Lahange had brought the dead body of Rohidas Hari Pawar and the same was identified by PW 1 Ankush at about 11.15 a.m. for performing post mortem and the same was done by him. During the course of the post-mortem he noticed the following injuries on the dead body:

(i) Stab injury on left side, lower side of chest, and left hypochondric region on 10th and 11th ribs. 4 inches lateral to ambalicus

and 5 inches below nipple. Size - 1 1/2 inch x 1 inch depth 4 inches. The margins are red and pinkish colour, clean and sharp cutting.

(ii) Abrasion on zipisternum of chest transverse 3 inches long and lenier.

The cause of death as per the doctor was "cardio respiratory failure due to haemorrhagic shock due to poly trauma to ling, liver and spleen due to stab injury." The doctor confirmed that the said injury could be caused by sharp and stab weapon and it could be possibly by an article like knife (article no.5) shown to him in the Court. The PM report at Exhibit 33 was prepared by him and signed and the contents therein were correct. He further stated that on 9/6/2002 accused Shivaji Bhoi was also brought to him by police constable S.B. Lahange at about 6.30 p.m. and he had medically examined the accused. He had noticed that there was an injury to the accused on his right hand fallengs transverse incised injury in the size of 1 1/2 x 1/2 x 1/2 cm. It was a sharp cutting injury and the possibility of heavy bleeding from the said injury could not be ruled out. Such type of injury could be caused by sharp weapon like

the knife (article no.5). The blood sample of the accused was taken by the doctor and the injury certificate was issued at Exhibit 34. The evidence of the Medical Officer clearly went to show that Rohidas died a homicidal death and it was on account of the injury caused to him by a sharp weapon like knife.

5. The defence story that Rohidas was dead in the house of PW 6 Bhanudas and his dead body was shifted to his house has been falsified by the prosecution by the evidence of more than two witnesses. PW 5 Shivaji and PW 6 Bhanudas clearly stated before the trial Court that though Rohidas cried when the injury was inflicted on him by the accused and he was bleeding profusely, he was still alive and was lifted by PW 5 and PW 6 and two others and taken to his house when PW 2 Mirabai was present along with her daughter. PW 2 Mirabai also stated before the trial Court that the deceased was made to lie on the ota in front of her house and he was profusely bleeding. She immediately rushed to him and found that he was alive and talking. PW 4 Vitthal Gangurde who had driven his jeep bearing registration no.15 K 2587 to the Rural Hospital at Niphad stated in his

depositions before the trial Court that on 8/6/2002 at about 7.30 p.m. when Ankush PW 1 had gone to him for enquiry of the availability of jeep but had told him that he was tired and, therefore, he would not be able to drive the same. However, after about half an hour PW 1 Ankush returned to him and told that no other jeep was available and insisted to take out his jeep. Therefore, Vitthal agreed and took his jeep out and he reached the deceased and four to five other persons to the Rural Hospital at Niphad. As the road was not good enough the deceased had asked Vitthal to drive the vehicle slowly and, therefore, he emphatically stated before the trial Court that while the deceased was being taken to the hospital, he was alive. Adding to this evidence, PW 10 the Medical Officer in his cross-examination stated :

> "...I again say it is not possible to cause instantaneous death by such injury. It is not true that a person cannot talk having blood oozing from layrings. Such injury may cause respiratory failure. It is not true that the injury on the person of the deceased was sufficient to cause instant death. The deceased had died within 24 hours prior to

P.M...."

6. The oral evidence of PW 5 Shivaji before the trial Court goes to show that he had gone to the house of Bhanudas PW 6 at about 6.45 p.m. on 8/6/2002 and they discussed the next day's work to be undertaken in the farm of Shri Balasahib Taskar. They were chitchatting in the rear side room in the house of Bhanudas and were smoking chilim. At about 7.15 p.m. deceased Rohidas came there and told them that he had gone out of station and returned in the afternoon. He also joined smoking chilim and when all of them were sitting in the rear side room of the house of Bhanudas, the accused reached there and stood for a while. He then started talking to the deceased and said that the deceased had raped his wife. Then the accused took out a knife from his pocket and stabbed the deceased on his stomach. The deceased cried for help. He wanted to assault the deceased with another blow when Shivaji and Bhanudas caught hold of the accused and snatched the knife from him. In this process Bhanudas sustained an injury to his finger and the accused ran away. The deceased had sustained bleeding injury on his stomach and due to the hue and cry people also gathered

around the house of Bhanudas and with the help of two others the deceased was lifted in the injured condition and reached to his house. Ankush was not present but his wife Mirabai was present in the house. Ankush came subsequently. This substantive evidence could not be weakened in the cross-examination of PW 5 Shivaji in any manner. He agreed in the cross-examination that there were no blood stains on his clothes as well as the clothes of Bhanudas PW 6, though both of them with the help of other two had lifted and reached him to his house. He admitted in his cross-examination that he had not narrated the incident to Mirabai on that day and so also he did not tell the same thing to Ankush. He also admitted that he had not informed the police patil also about the incident but had told to the family members of the deceased. He also admitted that he did not accompany the deceased in the jeep. Though the police had come to the village in the night they did not come to him and he was called on the next day when his statement was recorded. He denied the suggestion that Rohidas had expired on the spot. The testimony of PW 5 Shivaji has been fully supported by the oral depositions of PW 6 Bhanudas. He further stated that after the accused gave one

blow of knife to the deceased he snatched the knife from the accused and kept in the dung pit near his house. He denied the suggestion in the cross-examination that he and his friends were smoking ganja with the help of chilim and insisted that they were smoking tobacco. He also denied that PW 5 Shivaji was in the business of illicit liquor sale in the village.f He also denied the very same suggestion in respect of the deceased. He also denied that all of them used to fight amongst themselves under the influence of intoxication. He also denied the suggestion that there was no electric light in his house. He also denied the allegation that he had stabbed the deceased and that Rohidas succumbed to the injuries while he was in the house of Bhanudas. He admitted that he did not inform others that he had kept the knife in his dung pit. He denied the suggestion that it was his knife. He admitted that the deceased was their friend and that he had told Ankush about the incident. He did not tell about the incident to Mirabai as he was frightened and for the same reason he did not accompany the deceased to the hospital. He admitted that he had not informed the police though they had come to the village in the night and he was in the

house. The police went to him in the morning and his statement was recorded at about 9.30 a.m. on 9/6/2002 and at about 4 to 5 p.m. he handed over the knife to the police. He had not disclosed about the knife to anyone till he handed over to the police as he was frighted due to the incident. He denied the suggestion that he did not disclose about the knife because he had stabbed the deceased by the same. He admitted that on the next day he had gone to the doctor for treatment as he had sustained injury to his finger and he was not sent to the doctor by the police. He also denied the suggestion that the deceased was murdered by him and PW 5 Shivaji and they concocted a story and next day in the morning informed the police that the accused had assaulted the deceased.

. In addition to these two eye witnesses it is also relevant to consider the evidence of PW 2 Mirabai. She stated in her examination in chief, inter alia:

> "...People brought the deceased and kept him at our platform. That time there was profused bleeding from his stomach. I was afraid of.

> I then ran towards the house of accused. Accused was rubbing his hands and cleaning the blood. I asked him why he had stabbed the deceased. He replied that I was unaware of the fact and what he did was the right thing. Then he ran away..."

These disclosures before the trial Court remained in-tact though Mirabai was subjected to a detailed cross-examination by the defence. The improvements that were sought to be pointed out from her statement made to the police did not in any way affect these disclosures made by her before the trial Court involving the accused in the assault on the deceased. This is an additional circumstance regarding the involvement of the accused as stated by the two eye witnesses PW 5 Shivaji and PW 6 Bhanudas.

7. PW 1 Ankush, the brother of the deceased reached his home after the deceased was brought in injured conditions by PW 5 and PW 6. The evidence of this witness as well as PW 4 and PW 2 indicated that he tried his best to arrange for the jeep at the earliest possible so as to take his injured brother to the hospital at Niphad and as no jeep was

available, on his second request PW 4 took Rohidas to the hospital in jeep at about 8 p.m. There is nothing to support the allegation of the defence that PW 1 Ankush was aware when he reached the spot i.e. his house that his brother Rohidas was already dead.

8. Now coming to the issue of motive, as noted earlier it has come in the evidence of PW 5 and PW 6 that when the accused reached the house of PW 6 Bhanudas while all the three of them i.e. PW 5, PW 6 and the deceased were smoking chilim, he stood there for some time and told the accused that he had raped his (accused) wife. PW 11 Eknath Pagare, a resident of Nandurmadhameshwar stated in his examination in chief before the trial Court that on 4/6/2002 he had visited village Dindori. He was knowing the accused in asmuchas he was cultivating his land for the last about ten years on crop share basis. His visit was at the request of the accused and therefore he went to his house. The wife of the accused was in the house and the accused had asked him to persuade his wife to behave properly. The witness stated before the trial Court that the accused was suspecting that the deceased was having illicit relationship with the wife of the accused. On the next day again he had

gone to village Dindori and he had seen the deceased standing in front of his house. He met the deceased and conveyed to him that the accused was suspecting his involvement with the wife of the accused and, therefore, he should behave properly. He also stated that he had told the same thing to the family members of the deceased. On 8th June 2002 the police patil had invited him for dinner along with Ankush PW 1 and after dinner he had gone back to his house and within 15-20 minutes PW 1 went back to him and informed him that the accused had assaulted his brother Rohidas. He, therefore, came back to village Dindori with PW 1 and saw the deceased with the injury covered by a cloth. He assisted PW 1 in searching for a jeep and finally Vitthal Gangurde lent his jeep and drove the same to the hospital. On the next day he was in his house located in the agricultural land and at about 6.30 a.m. the accused reached there. He was wearing underwear and banyan. He told the accused that Rohidas expired and the accused replied that it was bound to be. He gave water to the accused to wash his mouth and also offered him tea. He took him to the police patil of Nandurmadhameshwar and handed over the accused to the police patil. He attended the funeral and informed PW 1 what the accused had

told him two days back. Thus the evidence of PW 5, PW 6 and PW 11 as brought before the trial Court through their oral depositions went to show that the accused was suspecting that his wife was involved with the deceased and they were carrying on an illicit relationship. The accused had sought the intervention of PW 11 to refrain both of them from continuing with such relationship and accordingly PW 11 had met the wife of the accused as well as the deceased separately and conveyed them the impression that the accused carried. The prosecution thus proved the motive the accused had in assaulting the deceased with knife on 8/6/2002 in the house of PW 6 Bhanudas while PW 5 Shivaji was also sitting there.

9. The chemical analysis report showed that the blood group of the deceased was "O" whereas the blood group of the accused was "A". The knife which was used in assaulting the deceased was smeared with blood of group "O" and the clothes of the deceased were also stained with the same blood whereas the clothes of the accused were found to be stained with blood of group "A". The defence had tried to capitalise on this issue before the trial Court and submitted that this circumstance of the absence of

blood with Group "A" on the knife went to show that the accused was not involved in the assault on the deceased and if he really was the assailant and there was an injury during the scuffle between him and PW 6 Bhanudas and as certified by PW 10, there ought to be some presence of blood stains with blood group "A". The learned Judge of the trial Court has rightly dealt with the same. Similar issue was tried to be argued regarding the blood stains found on the clothes of the accused more so when the blood stains thereon were found to be of blood group "A". When the knife was examined by the Chemical Analyser after a gap of sometime. The possibility could not be ruled out that some blood stains would disappear from its blade and, therefore, absence of blood stains with blood group "A" on the knife would not weaken the case of the prosecution. We find this view of the trial Court to be a possible view and it cannot be termed as perverse or unacceptable.

10. Finally the learned counsel for the appellant submitted before us that if regards be had to the evidence of PW 10, there was only one stab injury that was caused by the accused and, therefore, he

should not be convicted for an offence punishable under Section 302 of IPC. The learned counsel submitted that the offence committed by the accused would not amount to murder and it would fall squarely under Section 304 of IPC and more particularly in the second part. This submission on the face of it appears to be impressive but the trial Court has rightly rejected the same. It was not an attack arising out of a sudden quarrel or spontaneously without premeditation. We have elaborately dealt with the motive of the accused behind the attack on the deceased and the efforts he had made to dissuade both his wife as well as deceased to discontinue the illicit relationship. The evidence of PW 7 Riyaz Ansari goes to show that he was running a cutlery shop and he used to visit the weekly bazar at Yevala, Kopargaon and Kolpewadi etc. He stated that he was selling the articles like hammer. spanner, screw driver, knife etc. in these weekly bazars. He used to attend the weekly market at Niphad on every Friday and he would carry out the business in front of the Niphad Court premises. On 7/6/2002 he had his shop at Niphad and he was there for the whole day. He stated that he sold the knife (article no.5) to the accused on 7/6/2002 in the weekly bazar at Niphad for

a price of Rs.12/- and stated that he came to know about the name of the accused subsequently. He identified the knife in the Court and the accused as well. In his cross-examination he admitted that after he had seen the accused in his shop on 7/6/2002, he had seen him in the police station as well and that no receipt was issued when he sold the knife to the accused. He denied the suggestion that he was tutored by the police. This evidence further goes to show that the accused was preparing in advance to undertake an assault on the deceased and the crime finally committed was preplanned and, therefore, it cannot escape from the clutches of Section 302 of IPC. We have also noticed from the evidence of PW 10 Dr. Walunj that the injury was to the vital parts of the deceased though it was a single blow. It is well settled that a single blow by itself would not be sufficient to take the offence out of the ambit of Section 302 of IPC. The nature of injury and the assault being premeditated are equally relevant factors and having regards to the circumstances of the instant case, we have no doubt in our minds that the trial Court was right in convicting the accused for the offence punishable under Section 302 of IPC and he would not in any way

be entitled for acquittal from the said offence. In this regard we may usefully refer to the decision in the case of State of U.P. v. Premi **[AIR 2003 SC 1750]** and Hariprasad v. State of U.P. **[(2003) 9 SCC 60]**. The learned counsel for the appellant has placed reliance on the decision in the case of Khanjan Pal vs. State of U.P. **[(1990) 4 SCC 53]**. In that case the evidence clearly established that the whole incident was a sudden development and that the appellant had acted at the spur of the moment and without any premeditation. There was no ill-will or enmity between the two. A casual remark made by the appellant had provoked and the altercation ensured which culminated in the stabbing with knife. Though the appellant had used the knife only once and did not act in any cruel manner it was not a sudden quarrel in the heat of passion that the appellant had inflicted injury on the deceased without any intention to cause death and under these circumstances the Apex Court held that the act of the appellant fell under Exception 4 to Section 300 of IPC. Consequently the appellant was convicted under Section 304 Part II of IPC. We have already distinguished the case at hands from the case of Khanjan Pal and, therefore, the decision in Khanjan

Pal's case (Supra) is not applicable so as to support the accused for his acquittal under Section 302 of IPC.

11. In the premises, this appeal fails and the same is hereby dismissed. The order of conviction and sentence passed by the learned Addl. Sessions Judge, Niphad in Sessions Case No.19 of 2002 is hereby confirmed. Undoubtedly the appellant would be entitled for set off under Section 428 of Cr.P.C.

(R.S.MOHITE,J.) (B.H.MARLAPALLE,J.)